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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 407.

DAN ROGERS, PLAINTIFF IN ERROR,

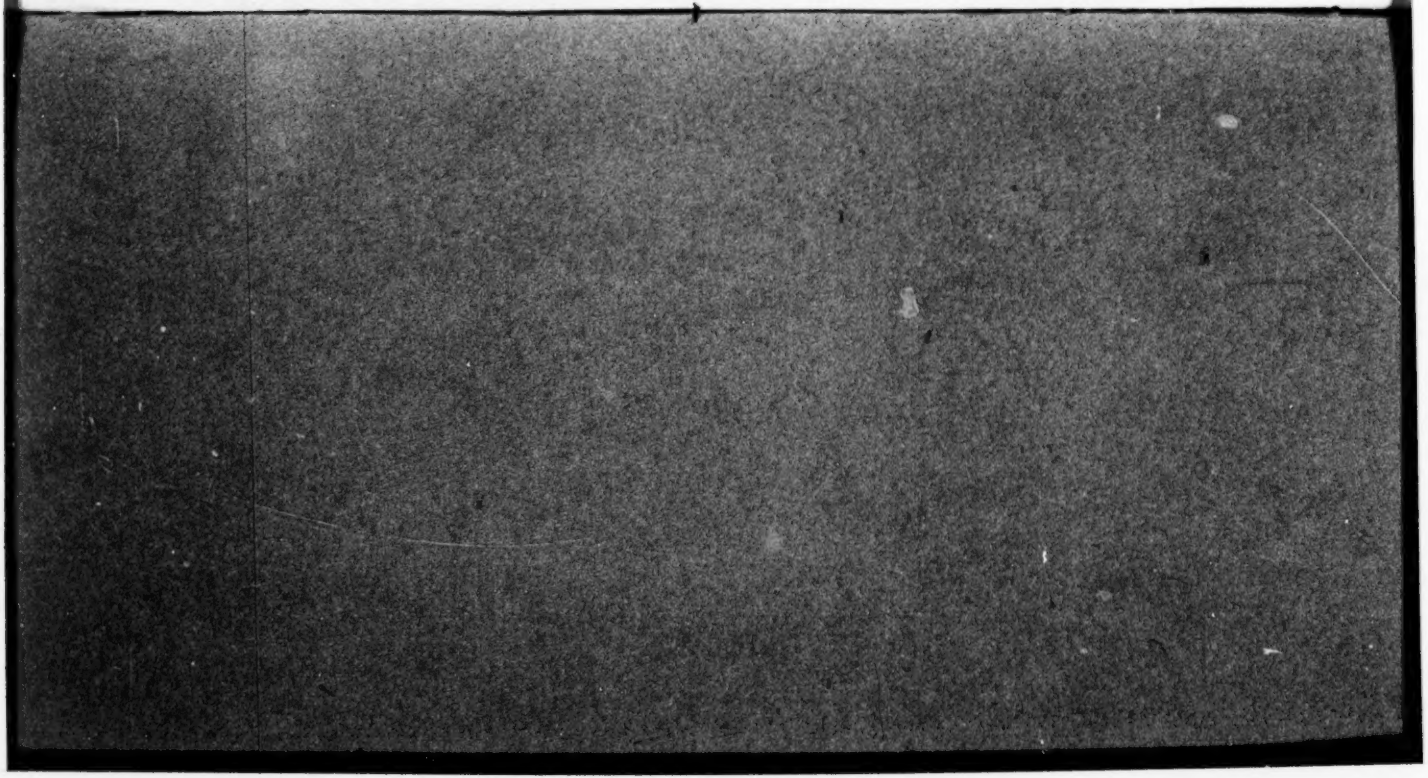
vs.

THE STATE OF ALABAMA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

FILED AUGUST 24, 1902.

(19,058.)



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1 & 2 (Copy of Supreme Court Record.)

3 Div. 408.

Supreme Court of Alabama. Filed May 4th, 1903. Rob't F. Ligon, Jr., Clerk.

DAN ROGERS, alias, etc.,
v.
THE STATE OF ALABAMA.

Appeal from Montgomery city court.

May 14, 1903.—Submitted on briefs.
July 10, 1903.—Affirmed. Sharpe, J.

3 *Organization of Court, July T.*, 1902.

THE STATE OF ALABAMA,
Montgomery County.

Be it remembered that at a term of the city court of Montgomery begun and holden for said county at the court house in the city of Montgomery State and county aforesaid, on the 1st Monday in July in the year of our Lord one thousand nine hundred and two it being the seventh day of said month

Present: The Honorable William H. Thomas associate judge presiding in the criminal division of said court, the following proceedings were had and the following judgments were rendered, to-wit:

Organization of Grand Jury.

Came Wm. R. Waller sheriff of Montgomery county and returned into court the following *venire facias* for grand jurors for this term of the court with his endorsement thereon as follows, towit:

STATE OF ALABAMA,
Montgomery County.

City Court of Montgomery, July Term, A. D. 1902.

4 To the sheriff of Montgomery county, Greeting:

You are hereby commanded to summon the following named persons to appear at the next term of the city court of Montgomery, to be holden at the court house in the city of Montgomery on the 7th day of July A. D. 1902, then and there to serve as grand jurors for said term, they having been duly drawn according to law to wit:

Names.	Beat.
1. F. F. Davant	3
2. Ed C. Fowler	2
3. M. A. Sharp	10
4. L. D. Judkins	21
5. Paul W. Smith	4
6. G. W. Covington	17
7. W. E. Menefee	20
8. W. T. Myrick	15
9. G. A. Phelps	13
10. W. M. Teague	3
11. W. W. Sellers	16
12. J. A. Pugh	12
13. J. L. Blakey	8
14. W. E. Fleming	19
15. P. H. Thrasher	18

5

16. W. A. Brown	7
17. S. Roman	3
18. John W. Durr, Jr.	1
19. G. Amerson	11
20. J. T. Shaver	14
21. J. A. Haigler	9

and have you then and there this writ with your endorsement thereon.

Witness my hand this the 7th day of June 1902.

H. H. MATTHEWS,
Clerk of the City Court of Montgomery.

In compliance with the mandate of the within writ, I have summoned the following named persons to serve as grand jurors for the present term of the city court of Montgomery.

W. R. WALLER,
Sheriff of M. C.

F. F. Davant, Ed C. Fowler, M. A. Sharp, L. D. Judkins, Paul W. Smith, G. W. Covington, W. T. Myrick, W. M. Teague, W. W. Sellers, J. H. Pugh, J. L. Blakey, W. E. Fleming, P. H. Thrasher, W. A. Brown, S. Roman, John W. Durr Jr., G. Amerson, J. T. Shaver, J. A. Haigler.

6 Not found as to W. E. Menefee, G. A. Phelps, and for good and sufficient reasons shown to the court it is considered and ordered by the court that M. A. Sharp and W. W. Sellers be and they are hereby excused from serving on the grand jury at this term of the court.

And F. F. Davant and P. H. Thrasher regularly summoned to appear and serve as grand jurors at this term of the court failing to appear when called, it is considered by the court that they are deemed

guilty of contempt of court, and it is ordered by the court that a rule issue to each of them requiring them to appear before this court and show cause why they should not be fined accordingly.

And the following persons appearing when called were duly empannelled according to law as the grand jury to wit: Ed. C. Fowler, L. D. Judkins, Paul W. Smith, G. W. Covington, W. T. Myrick, W. M. Teague, J. A. Pugh, J. L. Blakey, W. E. Fleming, W. A. Brown, S. Roman, John W. Durr Jr., G. Amerson, and J. T. Shaver and J. A. Haigler.

7 It is ordered by the court that S. Roman be and he is hereby appointed foreman of the grand jury, and the said S. Roman was duly sworn as foreman of the grand jury according to law, and the remainder of the grand jury were then duly sworn as grand jurors according to law, and the grand jury being charged by the court concerning their duty retired for the consideration of the same.

Hon. Tennent Lomax the solicitor being absent, Terry Richardson, Esqr., a competent attorney was appointed by the court to act as special solicitor in the solicotor's place and during his absence and was duly sworn according to law as such solicitor and thereupon entered upon the discharge of his duties as special solicitor.

W. B. Whiting was appointed by the court to act as bailiff of the grand jury and was duly sworn as bailiff according to law.

8 *Indictment.*

THE STATE OF ALABAMA, }
Montgomery County. }

City Court of Montgomery, July Term, A. D. 1902.

The grand jury of said county charge that before the finding of this indictment Dan Rogers alias Dan Rodgers alias Daniel Rogers alias Daniel Rodgers unlawfully and with malice aforethought killed Ben Howard by shooting him with a pistol against the peace and dignity of the State of Alabama.

TERRY RICHARDSON,
Special Solicitor for County of Montgomery.

No prosecution. A true bill.

S. ROMAN,
Foreman of the Grand Jury.

Presented in open court by the foreman of the grand jury, in the presence of thirteen other members of the grand jury, this 15th day of July A. D. 1902.

H. H. MATTHEWS,
Clerk of the City Court of Montgomery.

Filed this 15th day of July, 1902.

H. H. MATTHEWS,
Clerk of the City Court of Montgomery.

9 *Arraignment; Order Setting Day.*

THURSDAY, *July 17th, A. D.* 1902.

Court met persuant to adjournment.
Present: Hon. Wm. H. Thomas, associate judge presiding.

THE STATE
vs.
DAN ROGERS, alias DAN RODGERS, alias Daniel Rogers, alias Daniel Rodgers. } 1439. Indictment for Murder.

This day came the State, by Terry Richardson, Esq. special solicitor and came also the defendant in his own proper person and by attorney, and the defendant moves the court to quash the indictment, which said motion is in writing and which is filed, and the the defendant being duly arraigned and charged upon the indictment pleaded thereto not guilty, and by consent of the solicitor for the State and the defendant, it is ordered by the court that the 29th day of July, 1902, be and it is hereby appointed as a day for the trial of this cause, and it is further ordered by the court that one hundred jurors including the regular jurors summoned for the week of the court in which this cause is set for trial be summoned by the sheriff for the trial of this cause, and that a copy of the indictment and a list of the names of said one hundred jurors be served
10 on the defendant forthwith, and the names of the special jurors were drawn in open court from the jury box by the associate judge of this court in the presence of the defendant.

Organization of Court, Oct. T., 1902.

THE STATE OF ALABAMA,
Montgomery County.

Be it remembered that at a term of the city court of Montgomery begun and holden for said county at the court house in the city of Montgomery, State and county aforesaid on the 2nd Monday in October in the year of our Lord one thousand nine hundred and two, it being the thirteenth day of said month.

Present: The Honorable William H. Thomas, associate judge presiding in the criminal division of said court.

The following proceedings were had & the following judgments were rendered to wit:

Order Setting Day.

SATURDAY, *November 8th, A. D.* 1902.

Court met pursuant to adjournment.
Present: Hon. William H. Thomas, associate judge presiding.

THE STATE
vs.
DAN ROGERS, alias DAN RODGERS, alias DANIEL ROGERS, alias Daniel Rodgers. } 1439.

11 *Indictment for Murder.*

This day came the State of Alabama by W. W. Pearson Esq. special solicitor and came also the defendant in his own proper person and by attorney and the defendant refiles his motion, which said motion was filed at the last term of the court, to quash the indictment, and it appears to the court that at a former term of the court the defendant was duly arraigned and charged upon the indictment and pleaded thereto not guilty, and acknowledges now in open court that he has heretofore been served with a copy of the indictment in this case, and by consent of the special solicitor for the State and the defendant, it is considered and ordered by the court that the 8th day of December 1902, be and it is hereby appointed as a day for the trial of this cause, and it is further ordered by the court that one hundred jurors including the regular jurors summoned for the week of the court in which this case is set for trial be summoned by the sheriff for the trial of this cause, and that a list of the names of said one hundred jurors be served on the defendant forth-
12 with, and the names of the special jurors were drawn in open court from the jury box by the associate judge of this court in presence of defendant.

Motion to Quash Indictment.

THE STATE OF ALABAMA, }
Montgomery County. }

In the City Court of Montgomery, July Term, 1902.

THE STATE OF ALABAMA }
vs.
DANIEL ROGERS. }

And now comes the said defendant, in his own proper person and moves the court to set aside and quash the indictment against him herein, for the following reasons and causes towit:

Because, he is a person of dark complexion and of African descent, known as a negro, and in the selection and empanelment of the grand jury which found and presented the indictment against him herein, he has been denied the equal protection of the law, by the State of Alabama, guaranteed by the first section of the 14th amendment to the Constitution of the United States; and because, in the selection and empanelment of said grand jury, he was the victim of race prejudice and proscription, in that he, and all the members of his race in the State of Alabama have been denied the right to vote, and have been deprived of the privileges of electors, previously enjoyed by them in the State of Alabama, by
13 sections 180, 181, 183, 184, 185, 186, 187 and 188 of article 8 of the constitution of Alabama, which went into effect November 28th, 1901, on account of their race, color and previous condition of servitude, contrary to the first section of the 15th amendment to the Constitution of the United States, in this, towit:—

That said sections of the said constitution of Alabama were enacted for the avowed purpose of disfranchising the defendant and all the members of his race in the State of Alabama, on account of their race and color, and previous condition of servitude, and without disfranchising a single white man in the State of Alabama:

And because, said sections do, in themselves, single out and discriminate against the defendant and his race, and deny them the right to vote and become electors in the State of Alabama, granted to white persons, for no other reason than their race and color, and previous condition of servitude.

And because, subdivisions 1 and 2 of said section 180 of the constitution of Alabama, are not such a statement of the qualifi-
14 cations of electors, as are applicable to, and attainable by all alike, regardless *to* race, color and previous condition of servitude, but on the contrary, discriminate against the defendant and the negroes of Alabama, because of their race, color and previous condition of servitude; and because sub-division 3 of said section 180 is too loose and general, and is equivalent to investing the board of registrars with arbitrary power, and because, said section 181 of the constitution of Alabama, while it pretends to describe the qualifications of electors after January 1st, 1903, was in real truth intended to apply to the negroes of Alabama alone, and not to the white citizens of Alabama, and by the scheme of refusing to register practically all the negroes under the temporary plan, under section 180 of the constitution, although qualified for registration under that section, while all white men were registered, the State of Alabama thereby forces the great body of the negro population to wait until section 181 comes into operation, so that they alone will be affected by it;

And because, the pretended right of appeal from the de-
15 cision of the registrars given by said section 186 of the constitution of Alabama, was given to more effectually hinder and deny the negroes' right to vote in the State of Alabama, on account of their race and color, because the juries in the trial courts of Alabama are composed exclusively of white men, and all negroes

are excluded therefrom on account of their race and color, although otherwise qualified for such service, and have been so excluded for a great many years; although the population of the State of Alabama is very nearly even as to the white and colored races, and although in about 20 counties of said State, the negroes outnumber the whites; and that negroes would encounter the same race prejudice and obtain the same results upon appeal as upon application to the board of registrars;

And because, in the administration of said sections, the board of registrars of Montgomery county, Alabama, and the boards in all other counties of Alabama, have denied and refused to register all negroes applying to them, for no other reason than their race
16 and color, except in a few instances which happened to suit their wishes, while all white men were registered; and that all negroes were required to produce the testimony of two white persons as to their character and qualifications, and said boards refused to accept the testimony of any colored person, while all white men were registered upon their application without any further proof of qualification than the oath of the applicant; so that the great body of the negroes of Alabama amounting to more than seventy five thousand qualified persons have been disfranchised by the operation of said sections of said constitution of Alabama. and the defendant further says, that by reason of such proscription and disfranchisement and denial to him and his race the right to qualify as electors in the State of Alabama, that the members of his race are denied and deprived of all right and voice in the government of said county and State, and are taxed without any right to representation in the affairs of county and State, and are denied and deprived of all right to be drawn and selected on the grand jury which found and presented the indictment against him
17 herein:

And the defendant further says, that the jury commissioners appointed to select the grand jury which found and presented the indictment against him herein, selected no person or persons of color, or of African descent known as a negro, to serve on said grand jury, but on the contrary, did exclude from the list of persons to serve as such grand jurors, all colored persons, or persons of African descent known as negroes, although largely in the majority of the population in said Montgomery county, and although otherwise qualified to serve as such grand jurors solely on the ground of their race and color, and because they had been disfranchised and deprived of all rights as electors in the State of Alabama, by the provisions of sections 180, 181, 183, 184, 185, 186, 187 and 188 of article 8 of the new constitution of Alabama; and that said grand jury was composed exclusively of persons of the white race.

All of which the defendant is ready to verify.

his
DAN x ROGERS.
mark.

18 Sworn to and subscribed before me this 17th day of July, 1902.

H. H. MATTHEWS,
Clerk City Court of Montgomery.

WILFORD H. SMITH,
Att'y for Defendant.

Filed in office July 17, 1902.

H. H. MATTHEWS, *Clerk.*

Refiled Nov. 8, 1902.

H. H. MATTHEWS, *Clerk.*

Filed in office Dec. 8, 1902.

H. H. MATTHEWS, *Clerk.*

Motion to Strike.

City Court of Montgomery, October Term, 1902.

STATE OF ALABAMA
vs.
DAN ROGERS.

Now comes The State of Alabama by its solicitor and moves the court to strike from the files what is called or denominated defendant's motion to quash the indictment in said cause.

S. H. DENT, JR.,
Sol. for Montgomery County, Ala.

Filed in office this 8th day of Dec. 1902.

H. H. MATTHEWS, *Clerk.*

19 *Order Sustaining Motion of Solicitor to Strike Motion to Quash the Indictment from the Files.*

MONDAY, *December 8th, A. D.* 1902.

Court met pursuant to adjournment.
Present: Hon. William H. Thomas, associate judge presiding.

THE STATE OF ALABAMA
vs.
DAN ROGERS, alias DAN RODGERS, alias Daniel Rogers, alias Daniel Rodgers. — 1439. Indictment for Murder.

Jury and Verdict.

This the 8th day of December, 1902, came S. H. Dent, Jr., solicitor who prosecutes for the State of Alabama, and came also the de-

fendant in his own proper person and by attorney, and it appears to the court that at a former term of this court to wit; at the July term A. D. 1902, the said defendant was duly arraigned and charged upon the indictment and pleaded thereto not guilty, and it further appears to the court that on the 8th day of November, 1902, a former day of the present term of the court the trial of this cause was set for the 8th day of December 1902, by an order of the court made and entered in this cause on the 8th day of November
20 1902, and that a list of the names of the one hundred jurors have been only served on the defendant strictly in accordance with the said former order of the court made and entered in this cause on the said 8th day of November, 1902, and it further appearing to the court that on said 8th day of November, 1902, the said defendant acknowledged in open court that he had been duly served with a copy of the indictment in this cause. And by leave of the court first had and obtained the defendant withdraws his plea of not guilty, and interposes a motion to quash the indoctment for the reasons set out in said motion, and the State by its solicitor moves to strike said motion to quash the indictment from the files, and the motion of the solicitor for the State to strike said motion to quash the indictment from the files being argued by counsel and understood by the court, it is considered and ordered by the court, and it is the judgment of the court that said motion to strike be and the same is hereby sustained, and the defendant duly excepted, and before proceeding to draw and empannel a jury for the trial of the de-
21 fendant the defendant enters a plea of not guilty, and the defendant announcing himself ready for the trial on his said plea of not guilty thereupon came a jury of good and lawful men to-wit: W. J. Sellers and eleven others who being duly drawn, selected, and empannelled and sworn according to law, upon their oath do say, "We the jury find the defendant guilty of murder in the second degree and fix the punishment at twenty-five years in the penitentiary."

It is therefore considered and adjudged by the court that the said defendant is guilty of the offense of murder in the second degree, and he was remanded to jail to await the sentence of the law.

Sentence.

TUESDAY, *December 9th, A. D.* 1902.

Court met pursuant to adjournment.

Present: Hon. William H. Thomas, associate judge presiding.

THE STATE *vs.* DAN ROGERS, alias DAN RODGERS, alias Daniel Rogers, alias Daniel Rodgers.	1439. Offense: Murder in the Second Degree.

And now upon this the 9th day of December 1902, the
22 said defendant being now in open court, and it appearing to the court that the said defendant was duly convicted of said

offense on a former day of this term, and his punishment fixed by the jury at twenty five years' imprisonment in the penitentiary, and the said defendant being asked by the court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered by the court, and it is the judgment and sentence of the court, that the said defendant be imprisoned in the penitentiary of the State of Alabama for a term of twenty five years beginning from this day, and before passing sentence the court proceeded to ascertain by examination of such convict and other evidence that such convict was by occupation a "butcher," and that the cause of the commission of the crime is unknown. Said convict is of the male sex negro race and is about 29 years of age, and his physical condition is fairly good. And questions of law arising in this case for the decision of the supreme court of Alabama, it is ordered by the court that this sentence be and the same is hereby suspended pending defendant's appeal to said supreme court, and the defendant is allowed 30 days from this date in which to prepare and have signed his bill of exceptions.

23 *Bill of Exceptions.*

THE STATE OF ALABAMA, }
Montgomery County. }

In the City Court of Montgomery.

THE STATE OF ALABAMA }
vs. } No. 1439. Charged with Murder.
DAN ROGERS. }

Bill of exceptions.

Be it remembered that in the above entitled cause where The State of Alabama was plaintiff, and Dan Rogers was defendant, the following among other proceedings were had and done to wit: The case coming on for trial on the 8th day of December, 1902, the said defendant before arraignment and before pleading to the indictment against him, filed his motion to quash the indictment which motion was in words and figures as follows, to wit:

"THE STATE OF ALABAMA, }
Montgomery County. }

In the City Court of Montgomery, October Term, 1902.

THE STATE OF ALABAMA }
vs. }
DAN ROGERS. }

And now comes the defendant in his own proper person, and moves the court to set aside and quash the indictment against

him herein, for the following reasons and causes towit: Because, he is a person of dark complexion and of African descent, known as a negro, and in the selection and empanelment of the grand jury which found and presented the indictment against him herein, he has been denied the equal protection of the law, by the State of Alabama, guaranteed by the first section of the 14th amendment to the Constitution of the United States; and because, in the selection and empanelment of said grand jury, he was the victim of race prejudice and proscription, in that he, and all the members of his race, in the State of Alabama have been denied the right to vote, and have been deprived of the privileges of electors, previously enjoyed by them in the State of Alabama, by sections 180, 181, 183, 184, 185, 186, 187 and 188 of article eight of the constitution of Alabama, which went into effect November 28th, 1902, on account of their race and color and previous condition of servitude, contrary to the first section of the 15th amendment to the Constitution of the United States, in this towit: that said sections of the said constitution of Alabama were enacted for the avowed purpose of disfranchising the defendant, and all members of his race in the State of Alabama, on account of their race and color, and previous condition of servitude and without disfranchising a single white man in the State of Alabama,

And because, said sections do, in themselves, single out and discriminate against the defendant and his race, and deny them the right to vote and become electors in the State of Alabama granted to white persons, for no other reason than their race and color, and previous condition of servitude; and because, sub-divisions 1 and 2 of said section 180 of the constitution of Alabama, are not such a statement of the qualifications of electors, as are applicable to, and attainable by all alike, regardless of race color, and previous condition of servitude, but on the contrary, discriminate against the defendant and the negroes of Alabama, because of their race, color and previous condition of servitude; and because sub-division 3 of said section 180, is too loose and general, and is equivalent to investing the board of registrars with arbitrary power, and because said section 181 of the constitution of Alabama, while it pretends to prescribe the qualifications of electors after January 1st, 1903, was in real truth, intended to apply to the negroes of Alabama alone, and not to the white citizens of Alabama, and by the scheme of refusing to register practically all the negroes under the temporary plan, under section 180 of the constitution although qualified for registration under that section, while all white men are registered, the State of Alabama thereby forces the great body of the negro population to wait until section 181 comes into operation, so that they alone will be affected by it; and because, the pretended right of appeal from the decision of the registrars, given by said section 186 of the constitution of Alabama, was given to more effectually hinder and deny the negroes' right to vote in the State of Alabama, on account of their race and color, because the juries in the trial courts of Alabama are composed exclusively of white men

and all negroes are excluded therefrom on account of their race and color, although otherwise qualified for such service, and have
27 been so excluded for a great many years; although the population of the State of Alabama is very nearly even as to the white and colored races, and although in about twenty counties of said State, the negroes outnumber the whites; and the negroes would encounter the same race prejudice and obtain the same results upon appeal, as upon application to the board of registrars;

And because, in the administration of said sections, the board of registrars of Montgomery county and the boards in all other counties of Alabama, have denied and refused to register all negroes applying to them, for no other reason than their race and color, except in a few instances which happened to suit their wishes, while all white men were registered; and that all negroes were required to produce the testimony of two white persons as to their character and qualifications and said boards refused to accept the testimony of any colored person, while all white men were registered upon their application without any further proof of qualification than the oath of the applicant; so that the great body of the
28 negroes of Alabama amounting to more than seventy-five thousand qualified persons have been disfranchised by the operation of said sections of said constitution of Alabama;

And the defendant further says, that by reason of such proscription and disfranchisement and denial to him and his race the right to qualify as electors in the State of Alabama, that the members of his race are denied and deprived of all right and voice in the government of said county and State, and are taxed without any right to representation in the affairs of the county and State, and are denied and deprived of all right to be drawn and selected on the grand jury which found and presented the indictment against him herein;

And the defendant further says, that the jury commissioners appointed to select the grand jury which found and presented the indictment against him herein, selected no person or persons of color, or of African descent known as a negro, to serve on said
29 grand jury, but on the contrary, did exclude from the list of such persons to serve as such grand jurors, all colored persons, or persons of African descent known as negroes, although largely in the majority of the population in said Montgomery county, and although otherwise qualified to serve as such grand jurors, solely on the ground of their race and color, and because they had been disfranchised and deprived of all rights as electors in the State of Alabama, by the provisions of sections 180, 181, 183, 184, 185, 186, 187, and 188 of article 8 of the new constitution of Alabama; and that said grand jury was composed exclusively of persons of the white race.

All of which the defendant is ready to verify.

his
DAN x ROGERS.
mark.

Sworn to and subscribed before me this 17th day of July, 1902.

H. H. MATTHEWS,
Clerk of the City Court of Montgomery."

Which motion was by the court struck from the files and
30 dismissed upon the application and motion of the State solicitor, and the court then and there refused to permit the defendant's attorney to introduce any evidence in support of said motion to quash, and struck the same from the files as aforesaid, without hearing any evidence in support of the allegations therein contained; to which ruling of the court the defendant by his attorney then and there duly excepted.

And afterwards to wit: after the defendant had been arraigned and entered his plea of not guilty, when the first juror was called and sworn to answer questions as to his qualifications prior to his empanelment to serve as a juror in the above entitled cause, after said juror had been accepted by the solicitor for the State and tendered the defendant, the defendant filed his motion to quash the panel of petit jurors, which motion was made and urged against each of the twelve jurors separately as they were sworn and tendered to the defendant; which motion was in words and figures as follows to wit,

"THE STATE OF ALABAMA,
Montgomery County.

31 In the City Court of Montgomery, October Term, 1902.

THE STATE OF ALABAMA
vs.
DAN ROGERS.

And now comes the said defendant in his own proper person and moves the court to set aside and quash the panel of the petit jury empannelled to try him herein for the following reasons and causes to-wit:

I.

Because, he is a person of dark complexion and of African descent, known as a negro, and in the selection and empanelment of said petit jury herein, he has been denied the equal protection of the law, by the State of Alabama, guaranteed by the first section of the 14th amendment to the Constitution of the United States.

II.

And because, in the selection and empanelment of said petit jury, he was the victim of race prejudice and proscription, in that he, and all the members of his race in the State of Alabama have been

denied the right to vote, and have been deprived of the priv-
32 ileges of electors, previously enjoyed by them in the State of Alabama, by sections 180, 181, 183, 184, 185, 186, 187 and 188 of article eight of the constitution of Alabama, which went into effect November 28th, 1901, on account of their race, color and previous condition of servitude, contrary to the first section of the 15th amendment to the Constitution of the United States, in this, to-wit:

That said sections of the constitution of Alabama were enacted for the avowed purpose of disfranchising the defendant and all the members of his race in the State of Alabama, on account of their race and color, and previous condition of servitude, and without disfranchising a single white man in the State of Alabama.

And because said sections do, in themselves, single out and discriminate against the defendant and his race, and deny them the right to vote and become electors in the State of Alabama, granted to white persons, for no other reason than their race and color, and previous condition of servitude:

And because subdivisions one and two of said section 180
33 of the constitution of Alabama are not such a statement of the qualifications of electors, as are applicable to, and attainable by all alike, regardless *to* race, color, and previous condition of servitude, but on the contrary, discriminate against the defendant and the negroes of Alabama because of their race, color and previous condition of servitude; and because subdivision 3 of said section 180 is too loose and general, and is equivalent to investing the board of registrars with arbitrary power:

And because, said section 181 of the constitution of Alabama, while it pretends to prescribe the qualifications of electors after January 1st, 1903, was in real truth intended to apply to the negroes of Alabama alone, and not to the white citizens of Alabama, and by the scheme of refusing to register practically all the negroes under the temporary plan, under section 180 of the constitution, although qualified for registration under that section, while all white men were registered, the State of Alabama thereby forces the great body of the negro population to wait until section 181 comes into
34 operation, so that they alone will be affected by it:

And because, the pretended right of appeal from the decision of the registrars given by said section 186 of the constitution of Alabama was given to more effectually hinder and deny the negroes' right to vote in the State of Alabama, on account of their race and color, because the juries in the trial courts of Alabama are composed exclusively of white men, and all negroes are excluded therefrom on account of their race and color, although otherwise qualified for such service, and have been so excluded for a great many years; although the population of the State of Alabama is very nearly even as to the white and colored races, and although in about twenty counties in said State, the negroes outnumber the whites; and that negroes would encounter the same race prejudice and obtain the same results upon an appeal as upon application to the board of registrars:

And because in the administration of said sections, the board of registrars of Montgomery county, Alabama, and the boards in all other counties of Alabama, have denied and refused to
35 register all negroes applying to them, for no other reason than their race and color, except in a few instances which happened to suit their wishes, while all white men were registered; and that all negroes were required to produce the testimony of two white persons as to their character and qualifications, and said boards refused to accept the testimony of any colored person, while all white men were registered upon their application without any further proof of qualification than the oath of the applicant; so that the great body of the negroes of Alabama, amounting to more than seventy five thousand qualified persons have been disfranchised and denied the right to vote, because of their race and color, by the operation of said sections of said constitution of Alabama.

And the defendant further says, that by reason of such proscription and disfranchisement and denial to him and his race the right to qualify as electors in the State of Alabama, that the members of his race are denied and deprived of all right and voice in the government of said county and State, and are taxed without
36 any right to representation in the affairs of county and State, and are denied and deprived of all right to be drawn and selected on the petit juries used in the trial of criminal cases in said county;

And the defendant further says, that the jury commissioners appointed to select the petit juries empaneled in this case and to sit in the trial of cases in said court, selected no person or persons of color, or of African descent known as negroes, to serve on said petit juries, but on the contrary, did exclude from the list of persons to serve as such petit jurors, all colored persons, or persons of African descent known as negroes, although largely in the majority of the population in said Montgomery county, and although otherwise qualified to serve as such petit jurors solely on the ground of their race and color, and because they had been disfranchised and deprived of all rights as electors in the State of Alabama on account of their race and color, by the provisions of sections 180, 181, 183, 184, 185, 186, 187, and 188 of article eight of the new con-
37 stitution of Alabama; and that said petit jury is composed exclusively of persons of the white race.

All of which the defendant is ready to verify.

his
DAN x ROGERS.
mark.

Sworn to and subscribed before me this 8th day of December, 1902.

H. H. MATTHEWS,
Clerk of the City Court of Montgomery, Alabama.

And the defendant's attorney at the same time submitting said motion, then and there asked permission of the court and offered to

introduce testimony in support of the allegations contained in said motion, but the court refused to allow the introduction of any evidence, or to hear any proof in support of the same, and overruled said motion without investigating the truth or falsity of the allegations contained in said motion, to which ruling of the court the defendant by his attorney then and there duly excepted.

That during the empanelment of said petit jury that after each juror had been passed upon and accepted by the solicitor for
38 the State and tendered the defendant, that the defendant refused and declined to accept any of the said jurors or to pass upon them at all, but that the court compelled the defendant to accept said jurors or to challenge them for cause or peremptorily as they were presented, to which ruling of the court the defendant by his attorney then and there excepted.

And, after a full panel of twelve jurors had been selected and sworn to try the said defendant, and before the introduction of any testimony, the said defendant renewed his motion to quash the panel of the petit jurors hereinbefore set forth, and then and there tendered and offered the following proof in support of the same to wit:

The testimony of David Johnson, clerk of the circuit court, who would have sworn that he is secretary of the jury commissioners of Montgomery county, Alabama, that he selected the grand jury that found and presented the indictment herein, and that he selected the persons to serve as petit jurors during the present term of this court; that all persons selected to serve on the grand
39 jury during the May term, 1902, of said court, were white persons, and that no negroes were selected on any of the juries for that term of the said city court of Montgomery, and that the jurors so selected were taken from the city directory, which has the letter C. opposite the name of all colored persons, while the names of white persons are left without any designating mark, and that he knew when he selected the jurors from said directory, that he was selecting only white persons to serve on the *ground* and petit juries. He would have further testified that he selected all the jurors serving on the grand and petit juries for the October term, 1902, of the city court of Montgomery, and that said jurors were selected from the registration lists showing the qualified electors of Montgomery county, made since the new constitution was put in operation, and that said registration lists designate what persons are colored, so that in his selection of jurors he knew that the per-
40 sons he selected were white and not colored, and that no negro was selected by him to serve on any jury of said city court during the October term, 1902, of the same.

The defendant also offered testimony of H. H. Matthews clerk of the city court of Montgomery, who would have testified that he has been clerk of the city court of Montgomery for about ten years, and that during that time no negro has been selected or drawn on any of the grand or petit juries in the city court of Montgomery, but

that during that time all the juries, grand and petit, were composed exclusively of white persons.

That negroes are in the majority of the population in Montgomery county, many of whom are educated and own real property and are esteemed in the community for their integrity good character and sound judgment.

The defendant also offered to introduce the testimony of
41 Jackson W. Giles, who would have testified that he has lived on Montgomery county for about forty years, and knows that the negroes are largely in the majority of the population in said county, and that prior to the operation of the new constitution there were about five thousand (5,000) qualified electors of the negro race in said county; that for more than ten years the grand and petit juries of Montgomery county in all the courts thereof have been composed exclusively of persons of the white race, and that all negroes were excluded therefrom on account of their race and color and previous condition of servitude, although great numbers of them are fit and competent to discharge the duties of grand and petit jurors with honesty and impartiality and intelligence, and are esteemed in the community in which they live for their integrity, good character and sound judgment, and are otherwise qualified to serve as grand and petit jurors; but since the operation of the new constitution of Alabama, only forty seven negroes out of five thousand (5,000) appear upon the registration lists of said county as
42 qualified electors, the great body of negroes being refused registration on account of their race and color and previous condition of servitude, while all white men were deemed qualified and allowed to register.

That the said board of registrars of Montgomery county, appointed to carry out and administer the suffrage provisions of the new constitution of Alabama, refused to register any negro applying for registration unless he produced the testimony of two white men as to his character and qualifications, and refused to accept the testimony of any colored man, and in many instances refused to register those who produced the testimony of white men, for no other reason than their race and color, while all white men were allowed to register without any proof of qualifications except the oath of the applicant.

That he applied to said board for registration and was refused, for no other reason than his race and color, and at the same time a great many other colored men who were qualified under the law applied for registration and were refused for the same reason,
43 while all white men applying for registration were granted certificates for life.

That he is over twenty-one years of age, and has resided in Montgomery county more than twenty (20) years, and has never been convicted of any offense, and has resided in the precinct of his residence for more than five years before applying for registration, and has heretofore exercised the rights of an elector under the laws of the State of Alabama and of the United States, and is well quali-

fied and entitled to registration under the laws of the State of Alabama and the United States; which testimony the court refused to hear, and refused to allow to be introduced, and overruled the defendant's renewed motion to quash the panel of the petit jurors, without hearing any proof as to the truth or falsity of the allegations therein contained. To which ruling of the court the defendant by his attorney then and there duly excepted.

Wherefore the said Dan Rogers, prays that this be taken as his legal bill of exceptions upon the same being duly signed by
44 the Hon. W. H. Thomas, associate judge of the city court of Montgomery, tendered and approved this 5th day of January, 1903, within the time required by the order of the court and before the adjournment thereof.

As witness my hand

WILLIAM H. THOMAS,
Associate Judge of the City Court of Montgomery.

Clerk's Certificate.

THE STATE OF ALABAMA, }
Montgomery County. }

I, Henry H. Matthews, clerk of the city court of Montgomery in and for said county and State, do hereby certify that the foregoing pages numbered from one to forty one inclusive contain a full, true and complete transcript of the record and proceedings of said court in a case lately therein pending wherein The State of Alabama was plaintiff and Dan Rogers *alias* Dan Rodgers *alias* Daniel Rogers *alias* Daniel Rodgers was defendant.

And I further certify that on the 9th day of December, 1902, the said defendant prayed for and was granted an appeal
45 from the judgment of said court to the present term of the supreme court of Alabama.

Witness my hand this 21st day of March, A. D. 1903.

H. H. MATTHEWS,
Clerk of the City Court of Montgomery.

46 (Minutes of the Supreme Court of Alabama, vol. 54, page 261.)

SUPREME COURT, THURSDAY, *May* 14, 1903.

The court met pursuant to adjournment.

Present: All the justices.

Montgomery City Court.

DAN ROGERS, alias, &c., }
v. } 3 Div. 408.
THE STATE OF ALABAMA. }

Come the parties by attorneys, and submit this cause on briefs for decision.

(Minutes of the Supreme Court of Alabama, vol. 54, page 364.)

SUPREME COURT, FRIDAY, *July 10th*, 1903.

The court met pursuant to adjournment.
Present: All the justices.

Montgomery City Court.

DAN ROGERS, alias, &c.,
v.
THE STATE OF ALABAMA. } 3 Div. 408.

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the city court there is no error. It is therefore considered that the judgment of the city court be in all things affirmed. It is also considered that the appellant pay the costs of appeal of this court and of the city court.

47 Jul- 10, 1903.

THE STATE OF ALABAMA,
Judicial Department.

The Supreme Court of Alabama, Special Term, 1903.

DAN ROGERS, alias, etc.,
v.
THE STATE OF ALABAMA. } 3 Div. 408.

Appeal from Montgomery city court.

SHARPE, *J.*:

The motion filed in this case to quash the indictment is framed upon the theory that the grand jury which found the indictment was an illegal body. Set out in the motion as "reasons and causes" for quashing, are averments to — effect that defendant is of African descent and that on account of their race and color, he and all the members of his race within the State, have by the suffrage provisions of the constitution of Alabama, been denied the right to vote, in violation of the fifteenth amendment of the Federal Constitution. In the motion there are also numerous averments made as to the manner in which the election laws are in practice administered in Montgomery and other counties in the State. The closing averments are that "the jury commissioners appointed to select the grand jury which found and presented the indictment against him herein, selected no person or persons of color or of Afri-

can descent known as a negro, to serve on said grand jury, but
48 on the contrary, did exclude from the list of persons to serve as such grand jurors, all colored persons, or persons of African descent known as negroes, although largely in the majority of the population in said Montgomery county, and although otherwise qualified to serve as such grand jurors solely on the ground of their race and color, and because they had been disfranchised and deprived of all rights as electors in the State of Alabama by the provisions of section- 180, 181, 183, 184, 185, 186, 187 and 188 of article 8 of the new constitution of Alabama; and that said grand jury was composed exclusively of persons of the white race." Had this motion been based upon the ground that negroes had, on account of their race and color been excluded from the grand jury, and had reasonably conformed to the requirement that "all pleadings must be as brief as is consistent with perspicuity, and the presentation of facts, or matter to be put in issue in an intelligent form (Code, § 3285), then the defendant might have been in position to invoke the doctrine declared in Carter *v.* Texas, 177 U. S. 442 and other cases cited in his brief touching the operation of the fourteenth amendment of the Federal Constitution and laws enacted for its enforcement. Here a non-existing voting status of the negro population is averred as coöperating with race and color as a cause for the alleged exclusion from the jury, and such exclusion if for cause other than race or color is not within the prohibition of either the fourteenth or fifteenth amendment of the Federal Constitution, or of any law of this State. Qualifications of jurors who may serve in the city court of Montgomery, are fixed by a local act of March 2 1901 (Acts 1900–1901, p. 1994). This act provides "that the board of jury commissioners shall select from the male residents of the county who have resided in said county for one year or more, over 21, and under 60 years of age, the names of all such persons, not exempt from jury duty, as in their opinion are fit and competent to discharge the duties of grand and petit jurors, with honesty, impartiality and intelligence." From those whose names are so obtained, jurors are required to be selected in a mode prescribed by other provisions of the act. Neither in this or other law is there anything which identifies the qualifications of jurors and electors or which in any way restricts the selection of jurors to
49 the classes designated by the State constitution as having the right to vote in popular elections, or to those who have been in fact permitted to register as voters. In no way could the alleged suffrage conditions have had effect to invalidate the indictment. The averments respecting those conditions, proposed the raising of immaterial issues and which are combined with other matter, in such way and volume as to render the pleading comprising the motion unnecessarily prolix, if not otherwise objectionable. "If any pleading is unnecessarily prolix, irrelevant or frivolous, it may be stricken out at the costs of the party so pleading, on motion of the adverse party."—Code, § 3286. Under our practice a motion to strike may be general, and the court may grant it upon any ground

which is sufficient, though not specified.—Brooks *v.* Continental Ins. Co. 125 Ala. 615. Here the motion to quash the indictment was stricken on the State's motion and the prolix character of the former motion is alone enough to justify that action.

The motion to quash the *venire* of petit jurors was made only after the State had been required to exercise, and had actually exercised, its right of accepting or rejecting an individual as a juror. The motion not having been made before the formation of the petit jury had been so begun came too late.—Thompson on Trials, § 91; 12 Ency. Pl. & Pr. 424; Thomas *v.* State, 94 Ala. 74; Ryan *v.* State, 100 Ala. 105.

The court did not err in requiring the defendant to pass on jurors accepted by the State or in putting him to trial before the jury as formed.

Error is not found in the record. Let the judgment be affirmed.

50 THE STATE OF ALABAMA, }
Judicial Department. }

The Supreme Court of Alabama.

DAN ROGERS, alias, etc., Appellant, }
v. } 3 Div. No. 408.
THE STATE OF ALABAMA, Appellee. }

From Montgomery city court.

THE STATE OF ALABAMA, }
City and County of Montgomery. }

I, Robert F. Ligon, clerk of the supreme court of Alabama, do hereby certify that the foregoing pages numbered from one to forty nine inclusive, contain a full, true, and correct copy of the record, orders, judgment & opinion of said supreme court in the above stated cause, as the same appear and remain of record in this office.

Witness, Robert F. Ligon, clerk of the supreme court of Alabama, this the 21st day of July, 1903.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON,
Clerk of the Supreme Court of Alabama.

50½ Copy.

Know all men by these presents, that we, Dan Rogers, as principal, and Nathan H. Alexander and J. W. Adams, as sureties, are held and firmly bound unto the State of Alabama in the full and just sum of five hundred dollars, to be paid to the said State of Alabama through its proper officers: to which payment, well and

truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 6th day of August, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a term of the supreme court of the State of Alabama in a suit depending in said court, between Dan Rogers and the said State of Alabama, a judgment was rendered against the said Dan Rogers, affirming his conviction of the crime of murder, by the city court of Montgomery, and the said Dan Rogers having prayed and sued out a writ of error from the judgment of said State supreme court to the Supreme Court of the United States and having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Alabama, through its proper officers citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof.

Now, the condition of the above obli5ation is such, that if the said Dan Rogers shall prosecute his writ of error to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

DAN ROGERS,

(Signed) By his att'y, W. H. SMITH. [SEAL.]
(Signed) NATHAN H. ALEXANDER. [SEAL.]
(Signed) J. W. ADAMS. [SEAL.]

Sealed and delivered in presence of

____ ____.
____ ____.

Approved by—
(Signed) EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

Aug. 14th, 1903.

51 STATE OF ALABAMA, }
County of Montgomery. }

Before me, John A. Elmore, United States comm'r for the middle district of Alabama, personally appeared Nathan H. Alexander, who is known to me & who being duly sworn deposes and says that he resides in the city and county of Montgomery, and that he is worth the sum of five hundred ($500) dollars over and above all his just debts, liabilities and legal exemptions.

(Sig.) NATHAN H. ALEXANDER.

Sworn to and subscribed before me this 6 day of August 1903.

[SEAL.] (Sig.) J. A. ELMORE,
U. S. Com'r.

STATE OF ALABAMA,
County of Montgomery.

Before me, John A. Elmore, United States commissioner for the middle district of Alabama, personally appeared J. W. Adams who is known to me & who being duly sworn deposes and says that he resides in the city and county of Montgomery, and that he is worth the sum of five hundred ($500) dollars over and above all just debts, liabilities and legal exemptions.

(Sig.) J. W. ADAMS.

Sworn to and subscribed before me this 6 day of August 1903.

[SEAL.] (Sig.) J. A. ELMORE,
U. S. Com'r.

I, Thomas G. Jones, judge of the United States district court for the northern and middle districts of Alabama, certify that I am acquainted with J. W. Adams and N. H. Alexander who signed the foregoing bond as sureties, and know they are worth the amounts for which they qualify, and were this bond submitted to me would deem the sureties sufficient and would approve it for the amount herein stipulated.

(Sig.) THOS. G. JONES,
U. S. Dist. Judge, Northern & Middle Districts of Ala.

52 DAN ROGERS
vs.
THE STATE OF ALABAMA.

To the Hon. E. D. White, one of the justices of the Supreme Court of the United States:

Your petitioner, Dan Rogers, a citizen of the United States and of the State of Alabama respectfully petitions and shows:—

First. That a final judgment was rendered against him on the 10th day of July, 1903, affirming his conviction of murder by the supreme court of the State of Alabama, the highest court of said State in which a decision could be had, where was drawn in question the suffrage provisions of the constitution of Alabama, on the ground of their being repugnant to the 15th amendment to the Constitution of the United States, and where was claimed by petitioner certain rights, privileges and immunities, under the 14th amendment to the Constitution of the United States, and the decision of the said supreme court of Alabama in effect was in favor of the validity of the suffrage provisions of the constitution of Alabama, and in effect was against the rights of petitioner claimed under the 14th amendment to the Constitution of the United States.

53 Second. That petitioner was indicted, tried and convicted for the crime of murder in the city court of Montgomery Alabama, and that at his trial before pleading to the indictment he

interposed a motion to quash the same on the ground that he had been denied the equal protection of the law by the State of Alabama, guaranteed by the 14th amendment to the Constitution of the United States, in the selection and empanelment of the grand jury which found the indictment, and that he and the members of his race had been disfranchised and denied the right to vote by the State of Alabama because of their race and color, by the suffrage provisions of the new constitution of Alabama, and because of such proscription and disfranchisement no member of his race was selected as a grand juror on the panel which found said indictment, all of which will more particularly appear in the record herewith submitted, which motion the court struck from the files and would not permit the introduction of any evidence in support of the same, to which ruling the defendant duly excepted, as will appear from the record.

Third. At his trial aforesaid, upon the empanelment of the petit jury and before entering upon the trial, petitioner interposed a motion to quash the panel of petit jurors, which was urged and submitted against each juror offered, and against the whole panel when completed, on the same ground urged in the motion to quash the indictment, and then and there asked leave to introduce witnesses and offered to introduce witnesses to prove the same, but the court overruled said motion, and refused to hear any evidence in support of the same, to which ruling the defendant then and there excepted,
54 all of which more fully appears from the record herewith submitted.

Fourth. That in the supreme court of the State of Alabama, the foregoing exceptions were the only ones taken and submitted as grounds of error in the trial court, and said exceptions were called to the attention of said supreme court in petitioner's assignments of error and brief, but said court affirmed the judgment of the lower court; petitioner asserts that the effort of the supreme court of Alabama to place its decision upon a question of State practice is unjust, erroneous and unfair, because not borne out or supported by a single previous decision of that court, and they have laid down a new rule in this case for the purposes thereof, and to defeat the rights claimed by petitioner under the Constitution of the United States.

Fifth. Because manifest injustice has been done petitioner in the record and proceedings and the rendition of the judgment in the above case finding him guilty of murder, as well as the adverse rulings and decision affecting his rights claimed under the 14th and 15th amendments to the Constitution of the United States.

Wherefore petitioner prays for writ of error whereby he may have his case removed, appealed or transferred to the Supreme Court of the United States, for examination and review of the errors apparent upon the face of the record herein, and such other process as may cause the same to be corrected by the Supreme Court of the United States.

WILFORD H. SMITH,
Att'y for Dan Rogers.

55 Supreme Court, State of Alabama.

DAN ROGERS, Plaintiff in Error,
vs.
THE STATE OF ALABAMA, Defendant in Error.

And now comes the said plaintiff in error by his attorney and makes the following assignments of error in the rulings and proceedings of this court, upon which he relies and expects to obtain a reversal in the Supreme Court of the United States, to wit:

First Assignment of Error.

Because the supreme court of the State of Alabama, erred in refusing to reverse the judgment of the trial court, because of the error in the trial court in striking from the files the motion of the plaintiff in error to quash the indictment, and refusing to permit the defendant's attorney to introduce any evidence in support of the same; the said motion being made on the ground that the plaintiff in error had been denied the equal protection of the law by the State of Alabama, guaranteed by the first section of the 14th amendment to the Constitution of the United States, and on the further ground
56 that the plaintiff in error and his race were the victims of race prejudice and proscription, and had been denied the right to vote by the State of Alabama, previously enjoyed by them, for no other reason than their race and color, contrary to the 15th amendment to the Constitution of the United States, and that said denial of equal rights and proscription and disfranchisement aforesaid, operated to prevent any persons of color from being selected on said grand jury because of their race and color and disfranchisement aforesaid, and that said grand jury was composed exclusively of white men.

Second Assignment of Error.

Because the supreme court of the State of Alabama, erred in refusing to reverse the judgment of the trial court, because of the error in the trial court in over-ruling the several motions of the plaintiff in error, to quash the panel of petit jurors selected to try the plaintiff in error, and refusing to allow the introduction of any evidence in support of the same; the said motions being made on the ground that the plaintiff in error had been denied the equal protection of the law by the State of Alabama, guaranteed by the first section of the 14th amendment to the Constitution of the United States, and on the further ground that the plaintiff in error and his race were the victims of race prejudice and proscription, and had been denied the right to vote by the State of Alabama, previously enjoyed by them, for no other reason than their race and color,

contrary to the 15th amendment to the Constitution of the United States, and that said denial of equal rights and proscription and disfranchisement aforesaid, operated to prevent any persons of color from being selected on said grand jury because of their race
57 and color and disfranchisement aforesaid, and that said grand jury was composed exclusively of white men.

Third Assignment of Error.

Because the supreme court of the State of Alabama erred in not reversing the judgment of the trial court, because of the error in the trial court of compelling the plaintiff in error to accept the trial jurors tendered to him by the solicitor for the State, after he had moved to quash the panel of said petit jurors on the grounds stated in his motions.

Wherefore the plaintiff in error prays that the judgment and sentence of the city court of Montgomery, and of the said supreme court of the State of Alabama, be reversed and held for naught.

WILFORD H. SMITH,
Attorney for Dan Rogers, Pl'f in Error.

58 THE STATE OF ALABAMA, }
Judicial Department. }

The Supreme Court of Alabama.

DAN ROGERS, alias, etc., Appellant, }
v. } 3 Div. 408.
THE STATE OF ALABAMA, Appellee. }

Appeal from Montgomery city court.

THE STATE OF ALABAMA, }
City and County of Montgomery. }

I, Robert F. Ligon, clerk of the supreme court of the State of Alabama, do hereby certify that the foregoing pages numbered from one (1) to fifty seven (57) inclusive, contain a full, true, and correct copy, of the record, orders, judgment, and opinion of said supreme court in the above stated cause, as the same appear and remain of record in this office; together with a full, true, and correct copy of the bond for appeal to the Supreme Court of the United States, the original application to said last named court for the writ of error, and the assignment of errors by the plaintiff in error.

Witness, my hand, and the seal of the supreme court of the State of Alabama, at the capitol, in the city of Montgomery, this 21st day of August, 1903.

[Seal of the Supreme Court of Alabama.]

ROB'T F. LIGON,
Clerk of the Supreme Court of the State of Alabama.

59 Supreme Court of Alabama. Filed Aug. 20, 1903. Rob't F. Ligon, Jr., Clerk.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Dan Rogers, plaintiff in error, and The State of Alabama, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the con-
60 struction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said Dan Rogers, plaintiff in error, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18th day of August, in the year of our Lord one thousand eight hundred and ninety-three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

61 Supreme Court of Alabama. Filed Aug. 20, 1903. Rob't F. Ligon, Jr., Clerk.

UNITED STATES OF AMERICA, ss:

To the State of Alabama, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Alabama, at Montgomery, Alabama, wherein Dan Rogers is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, associate justice of the Supreme Court of the United States, this fourteenth (14) day of August, in the year of our Lord one thousand nine hundred and three.

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

62 Due service of the within citation on the defendant in error is hereby admitted. This 20th day of August, 1903.

MASSEY WILSON,
Attorney General of Alabama.

Endorsed on cover: File No. 19,058. Alabama supreme court. Term No. 407. Dan Rogers, plaintiff in error, *vs.* The State of Alabama. Filed August 26, 1903. File No. 19,058.

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Clerk

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 407.

DAN ROGERS, PLAINTIFF IN ERROR,

vs.

THE STATE OF ALABAMA.

BRIEF FOR PLAINTIFF IN ERROR.

WILFORD H. SMITH,
Attorney for Plaintiff in Error.

(19,058.)

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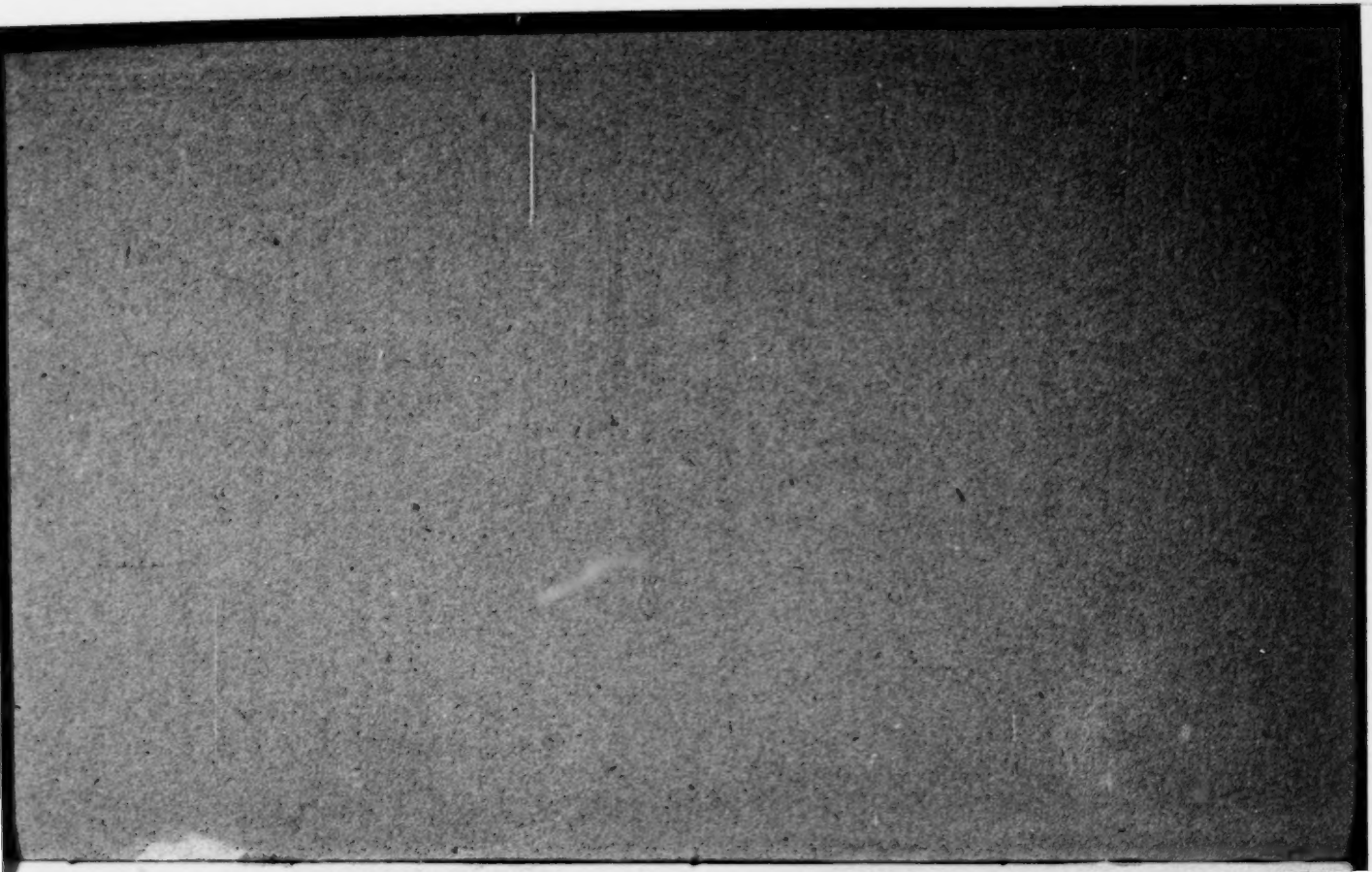

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 407.

DAN ROGERS, PLAINTIFF IN ERROR,

against

THE STATE OF ALABAMA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The plaintiff in error was indicted at the July term, 1902, of the city court of Montgomery for the crime of murder and at the October term, 1902, was tried and convicted. At the trial he moved to quash the indictment and the panel of petit jurors on the ground that he had been denied the equal protection of the law in the empanelment of said grand and petit jurors, and that his race had been disfranchised and denied the right to qualify as electors on account of their race and color and previous condition by the State of Alabama under and by virtue of the suffrage provisions of its constitution of 1901, which had the effect to exclude all negroes from the panel of grand and petit juries in the county of Montgomery.

The trial court struck the motion to quash the indictment from the files on the motion of the solicitor for the State, and refused to hear any evidence in support of the same; to which the plaintiff in error excepted.

Record, p. 13.

The motion to quash the panel of petit jurors was overruled, and the court likewise refused to allow the introduction of proof in support of the same; to which the plaintiff in error excepted.

Record, p. 16.

An appeal was taken from the judgment of the city court of Montgomery to the supreme court of Alabama, where the judgment of the city court was affirmed. The only errors presented to the supreme court of Alabama were the exceptions taken to the action of the trial court on the motions to quash the indictment and the panel of petit jurors, so that nothing but a Federal question was before the State supreme court for decision. Plaintiff in error points out the following errors in the judgment of the supreme court of Alabama upon which he relies for reversal in this court, to wit:

SPECIFICATION OF ERRORS.

I.

Because the supreme court of the State of Alabama erred in refusing to reverse the judgment of the trial court because of the error in the trial court in striking from the files the motion of the plaintiff in error to quash the indictment and refusing to permit the defendant's attorney to introduce

any evidence in support of the same, the said motion being made on the ground that the plaintiff in error had been denied the equal protection of the law by the State of Alabama guaranteed by the first section of the fourteenth amendment to the Constitution of the United States, and on the further ground that the plaintiff in error and his race were the victims of race prejudice and proscription, and had been denied the right to vote by the State of Alabama, previously enjoyed by them, for no other reason than their race and color, contrary to the fifteenth amendment to the Constitution of the United States, and that said denial of equal rights and proscription and disfranchisement aforesaid operated to prevent any persons of color from being selected on said grand jury because of their race and color and disfranchisement aforesaid, and that said grand jury was composed exclusively of white men.

II.

Because the supreme court of the State of Alabama erred in refusing to reverse the judgment of the trial court because of the error in the trial court in overruling the several motions of the plaintiff in error to quash the panel of petit jurors selected to try the plaintiff in error, and refusing to allow the introduction of any evidence in support of the same, the said motions being made on the ground that the plaintiff in error had been denied the equal protection of the law by the State of Alabama guaranteed by the first section of the fourteenth amendment to the Constitution of the United States, and on the further ground that the plaintiff in error and his race were the victims of race prejudice and proscription, and had been denied the right to vote by the State

of Alabama, previously enjoyed by them, for no other reason than their race and color, contrary to the fifteenth amendment to the Constitution of the United States, and that said denial of equal rights and proscription and disfranchisement aforesaid operated to prevent any persons of color from being selected on said petit jury because of their race and color and disfranchisement aforesaid, and that said petit jury was composed exclusively of white men.

III.

Because the supreme court of the State of Alabama erred in not reversing the judgment of the trial court because of the error in the trial court of compelling the plaintiff in error to accept the trial jurors tendered to him by the solicitor for the State after he had moved to quash the panel of said petit jurors on the grounds stated in his motions.

ARGUMENT.

The attempt on the part of the supreme court of Alabama to place its decision on the ground of State practice, in order to avoid the Federal question, is utterly futile.

Opinion of Ala. Supreme Court, Record, pages 19, 20, and 21.

There was nothing before that court but the Federal question the decision of which was essential to the determination of the case, and we contend that the judgment rendered was a decision of the Federal question and gives this court the right to review. The jurisdiction of this court, there-

fore, to review the decision of the Alabama supreme court being clear, the next question is: Was the decision of that court in accordance with the law? In support of our contention that the decision of that learned tribunal was erroneous and should be reversed, we submit the following POINTS OF ARGUMENT:

I.

The motion to quash the indictment, calling the attention of the court to the denial of rights claimed under the Federal Constitution, should not have been struck from the files without giving the plaintiff in error an opportunity to prove the allegations therein contained; and the action of the trial court in this particular, and its refusal to permit the introduction of any evidence in support of said motion, was such an error as called for a reversal by the supreme court of Alabama (Record, pp. 11, 12, and 13).

Carter against Texas, 177 U. S., 442.

The supreme court of Alabama admitted that the allegations of race discrimination against negroes as jurors was sufficient to sustain the motion and required a different ruling had it stood alone and had not been joined with the allegation of discrimination in the matter of registration, which, it was alleged, operated and had the effect of excluding them from jury service on account of race and color.

We submit that the allegation of the denial of rights under the fifteenth amendment strengthened rather than weakened the motion to quash the indictment, and required investigation by the trial court.

The Alabama supreme court was in error in holding that because the statutes of Alabama do not require that jurors shall be qualified electors that the second ground of the motion to quash was unavailing.

Record, p. 20.

We contend that it is utterly immaterial what the letter of the law is in this regard, if in fact and in truth those charged with its administration so enforced the law, it was the same as if it had been written in the statutes.

Yick Wo *vs.* Hopkins, 118 U. S., 356.

II.

The motion to quash the indictment was not prolix, but contained essential averments in the presentation of the rights claimed by the plaintiff in error under the Federal Constitution. Anyhow, this court will not be controlled by the decision of the State court as to what form of language shall be used in pleading rights claimed under the Federal Constitution.

III.

The action of the trial court in overruling the several motions of the plaintiff in error to quash the panel of petit jurors and refusing to allow the introduction of any evidence in support of the same was such an error as called for reversal in the supreme court of Alabama.

Carter *vs.* Texas, 177 U. S., 442.

Neal *vs.* Delaware, 103 U. S., 370.

Gibson *vs.* Mississippi, 162 U. S., 565.

Admitting for the sake of the argument that a motion to quash the panel of petit jurors on the ground of the denial of rights claimed under the Federal Constitution stands on the same footing with a motion to quash the venire for some trivial irregularity in its drawing, service, or return, still the motion in this case did not come too late, because it was made before the trial began, and (as the bill of exceptions states it) "when the first juror was called and sworn to answer questions as to his qualifications, prior to his empanelment to serve as a juror, after said juror had been accepted by the solicitor for the State and tendered the defendant" (Record, p. 13).

Peters against The State, 100 Ala., 12.
Ryan *vs.* The State, 100 Ala., 108.
Thomas *vs.* The State, 94 Alabama, 75.

IV.

We submit that a motion to quash the panel of petit jurors on the ground of the denial of rights claimed under the Federal Constitution stands on higher and different grounds from a motion to quash the venire for matters of form or irregularity contemplated in the Alabama decisions, and that the motion in this case did not come too late.

Shall the constitutional rights of our citizens be sacrificed to mere State forms, or shall the State practice be made to conform to the protection of great constitutional guarantees?

V.

The motion to quash the panel of petit jurors on the ground of the violation of the rights of the plaintiff in error under the fourteenth and fifteenth amendments to the Federal Constitution should have been sustained by the trial court, and, because of its failure to do so, its decision should have been reversed by the supreme court of Alabama.

The bill of exceptions shows that the plaintiff in error offered to introduce the testimony of David Johnson, clerk of the circuit court of Montgomery county, who would have sworn that he was secretary of the jury commissioners of Montgomery county, and as such selected the petit jurors for the October term, 1902, of the city court, who tried the defendant, and that said jurors were selected from the registration lists, and that no negroes were selected by him.

The bill of exceptions further shows that the testimony of H. H. Matthews, clerk of the city court, was offered, who would have testified that he had been ten years clerk of said court, and that during that time no negroes were drawn on any jury in that court, that the negroes are in the majority in Montgomery county, many of whom are qualified for jury service.

That the testimony of Jackson W. Giles was offered showing that, out of five thousand qualified electors of the negro race in Montgomery county, only forty-seven were on the registration lists because they had been excluded from the lists and refused registration under the suffrage provisions of the constitution of 1901, on account of their race and color, while all white men applying for registration were

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admitted and entered on such lists; and that, although qualified for jury service, all negroes were excluded from such service on account of their race and color and because not qualified electors enrolled on the registration lists.

Carter *vs.* Texas, 177 U. S., 442.
Williams *vs.* Mississippi, 170 U. S., 213.
Yick Wo *vs.* Hopkins, 118 U. S., 356.

Unquestionably, the record in this case shows a manifest denial of rights under the Federal Constitution by the authorities of the State of Alabama, in the face of recent decisions of this court, which calls for a reversal.

WILFORD H. SMITH,
Attorney for Plaintiff in Error.

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Supreme Court of the United States,

OCTOBER TERM, 1903.

No. 337.

JACKSON W. GILES, PLAINTIFF IN ERROR, against CHAS. B. TEASLEY, ET AL., Board of Registrars of Montgomery County, Alabama.	Suit for Damages.

No. 338.

JACKSON W. GILES, PLAINTIFF IN ERROR, against CHAS. B. TEASLEY, ET AL., Board of Registrars of Montgomery County, Alabama.	Application for Mandamus

No. 407.

DAN ROGERS, PLAINTIFF IN ERROR, vs. THE STATE OF ALABAMA.	Murder Case.

MOTION TO CONSOLIDATE AND ADVANCE.

Objections by defendants in error, in above causes, numbered 337 and 338, to the motion made to consolidate and advance them for hearing with cause number 407, by W. A. Gunter, attorney for defendants in error in said causes 337 and 338.

The defendants in error in said causes 337 and 338 respectfully object to the granting of the motion to advance said causes and consolidate them with the criminal case numbered 407 for the following reasons:

1. The said causes 337 and 338, are wholly dissimilar to cause 407, the first being civil causes involving private rights between individuals, and the latter being a criminal cause between the State of Alabama and the defendant therein, who was indicted and convicted of murder.

The principle of consolidation is impossible of operation when the parties are different and the causes of action are different and the questions different. Here the causes are wholly distinct in every feature. The judgment in case number 407 was one of conviction at the instance of the State of the plaintiff in error of a murder; in number 337, the judgment sought was damages in favor of the plaintiff in error in that suit, for alleged wrongful official action of the defendants in error in that case; while in the third case, number 338, a mandamus is sought by the plaintiff in error to compel official action by the defendants in error in that case.

It is evident that these multifarious cases, distinct as to parties and the nature of the proceeding, do not fall within the rule of Revised Statutes sec. 921, nor of the rule of the English practice as to consolidation.

Mutual Life Ins. Co. v. Hillmon, 145 U. S., 285.

2. By reference to the decision of the State Court in cases number 337 and 338 shown in 33 So. Rep., 819-20, as well as in the Records on file, it will be seen that no federal question was actually decided. If the cases were disposed of below without passing on such a question, nothing short of a trial of these cases can determine whether or not such a question will be decided in this court, for it is clear that if the judgment of the lower court may rest, and was decided on a non-federal question, the judgment will not be disturbed.

New Orleans v. N. O. Water Works Co,, 142 U. S., 84.

It cannot, therefore, be said that all or any of these cases present *the* same question for consideration, although it may be possible that the same question might with others, be presented in each case.

3. The questions presented cannot be said to be of public interest requiring advancement of the causes on the trial docket. We know of no public interest that will be served by an early judgment in causes number 337-8, and if there is any, in a speedy trial of the criminal cause number 407, it does not apply to the civil cause number 337-8.

The defendants in error in the latter causes, therefore, respectfully object to any association of their cases with 407, as well as to any advancement on the docket.

W. A. Gunby

Attorney for Appellees,
In cases No. 337 and 338.

IN THE SUPREME COURT OF THE

OCTOBER TERM, 1936

No. [illegible]

IVEY HODGES, Plaintiff in Error,

v.

THE STATE OF ALABAMA, Defendant in Error.

In Error to the Supreme Court of the State of Alabama.

Brief for defendant in error, by Messrs. [illegible],
Attorney General of Alabama.

IN SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

Number 407.

DAN RODGERS, *Plaintiff in Error,*

v.

THE STATE OF ALABAMA, *Defendant in Error,*

In error to the Supreme Court of the State of Alabama.

Brief for defendant in error, by Massey Wilson, Attorney General of Alabama.

STATEMENT OF FACTS.

The plaintiff in error was indicted in the City Court of Montgomery for murder. (R. p. 3). Before arraignment and plea to the merits plaintiff in error moved to quash the indictment, (R. p. 11-12) which motion was in the following language:

The State of Alabama, Montgomery County.
In the City Court of Montgomery, July Term, 1902.
The State of Alabama,
v.
Daniel Rodgers.

And now comes the said defendant, in his own proper person and moves the Court to set aside and quash the

indictment against him herein, for the following reasons and causes, to-wit:

Because he is a person of dark complexion and African descent, known as a negro, and in the selection and empanelment of the grand jury which found and presented the indictment against him herein, he has been denied the equal protection of the law, by the State of Alabama, guaranteed by the first section of the 14th amendment to the Constitution of the United States; and because, in the selection and empanelment of said grand jury, he was the victim of race prejudice and proscription, in that he, and all the members of his race in the State of Alabama, have been denied the right to vote, and have been deprived of the privileges of electors, previously enjoyed by them in the State of Alabama, by sections 180, 181, 183, 184, 185, 186, 187 and 188 of article 8 of the Constitution of Alabama, which went into effect November 28th, 1901, on account of their race, color and previous condition of servitude, contrary to the first section of the 15th amendment to the Constitution of the United States, in this ,to-wit:

That said sections of the said Constitution of Alabama were enacted for the avowed purpose of disfranchising the defendant and all the members of his race in the State of Alabama, on account of their race and color, and previous condition of servitude, and without disfranchising a single white man in the State of Alabama;

And because, said sections do, in themselves, single out and discriminate against the defendant and his race, and deny them the right to vote and become electors in the State of Alabama, granted to white persons, for no other reason than their race and color, and previous condition of servitude.

And because, subdivisions 1 and 2 of said section 180 of the Constitution of Alabama, are not such a statement of the qualifications of electors as are applicable to and attainable by all alike, regardless to race, color and previous condition of servitude, but on the contrary, discriminate against the defendant and the negroes of Alabama, because of their race, color and previous condition of servitude and because subdivision 3 of said section 180 is too loose and general, and is equivalent to investing the board of registrars with arbitrary power,

and because, said section 181 of the Constitution of Alabama, while it pretends to describe the qualifications of electors after January 1st, 1903, was in real truth intended to apply to the negroes of Alabama alone, and not to the white citizens of Alabama, and by the scheme of refusing to register practically all the negroes under the temporary plan, under section 180 of the Constitution, although qualified for registration under that section, while all white men were registered, the State of Alabama thereby forces the great body of the negro population to wait until section 181 comes into operation, so that they alone will be affected by it;

And because, the pretended right of appeal from the decision of the registrars given by said section 186 of the constitution of Alabama, was given to more effectually hinder and deny the negroes' right to vote in the State of Alabama, on account of their race and color, because the juries in the trial courts of Alabama are composed exclusively of white men, and all negroes are excluded therefrom on account of their race and color, although otherwise qualified for such service, and have been so excluded for a great many years; although the population of the State of Alabama is very nearly even as to the white and colored races, and although in about 20 counties of said State, the negroes outnumber the whites; and that negroes would encounter the same race prejudice and obtain the same results upon appeal as upon application to the board of registrars;

And because, in the administration of said sections the board of registrars of Montgomery county, Alabama, and the boards in all other counties of Alabama, have denied and refused to register all negroes applying to them, for no other reason than their race and color, except in a few instances which happened to suit their wishes, while all white men were registered; and that all negroes were required to produce the testimony of two white persons as to their character and qualifications, and said board refused to accept the testimony of any colored person while all white men were registered upon their application without any further proof of qualification than the oath of the applicant; so that the great body of the negroes of Alabama amounting to more than seventy-five thousand qualified persons have been disfranchised by the operation of said sections of said

constitution of Alabama, and defendant further says, that by reason of such proscription and disfranchisement and denial to him and his race the right to qualify as electors in the State of Alabama, that the members of his race are denied and deprived of all right and voice in the government of said county and State, and are taxed without any right to representation in the affairs of county and State, and are denied and deprived of all right to be drawn and selected on the grand jury which found and presented the indictment against him herein;

And the defendant further says, that the jury commissioners appointed to select the grand jury which found and presented the indictment against him herein, selected no person or persons of color, or of African descent known as a negro, to serve on said grand jury, but, on the contrary, did exclude from the list of persons to serve as such grand jurors, all colored persons, or persons of African descent known as negroes, although largely in the majority of the population in said Montgomery county, and although otherwise qualified to serve as such grand jurors solely on the ground of their race and color, and because they had been disfranchised and deprived of all rights as electors in the State of Alabama, by the provisions of sections 180, 181, 183, 184, 185, 186, 187, and 188 of article 8 of the new constitution of Alabama; and that said grand jury was composed exclusively of persons of the white race.

All of which the defendant is ready to verify.

his
Dan X Rogers.
mark

Sworn to and subscribed before me this 17th day of July, 1902.

H. H. Matthews,
Clerk City Court of Montgomery.

This motion was struck from the files upon the motion of the State, and to this action the plaintiff in error excepted.

After plaintiff in error had been arraigned and entered his plea of not guilty, and after a petit juror had been called and sworn to answer the questions touching his qualifications as a petit juror and after said juror had been accepted by the State, and tendered the plaintiff in error he moved to quash the panel of the petit jurors upon

substantially the same grounds as the motion to quash the indictment. (R. p. 13, 14 and 15.) The court overruled this motion to quash the venire of petit jurors, and to this action of the court the plaintiff in error duly excepted. The action of the court in denying these two motions,—the one to quash the indictment, and the other to quash the venire of petit jurors,—is the only matter in the record of which plaintiff in error complains.

BRIEF AND ARGUMENT.

1. The Supreme Court of Alabama decided that the motion to quash the venire of petit jurors came too late; that it should have been made before the formation of the petit jury had begun; and that not having been made until after the State had been required to pass upon a juror, and had selected such juror, the motion should not have been entertained, regardless of its merits.

The authorities cited by the court in support of its decision seems to abundantly support it.

In 12 Ency. Pl. & Pr. 424, it is said:

"Hence a motion to quash the array must be made as soon as the facts which warrant it become known, and it is generally held that the challenge or objection must be interposed before entering on the formation of the jury ....."

In Thomas v. State, 94 Ala. 74, the defendant moved in arrest of judgment on a ground going to the regularity of the service of the names of the jurors upon him. In the course of the opinion the court said:

"Had that motion been made before the trial was entered upon, it should, and doubtless would, have been sustained. Such motion, not raising the question of the guilt or innocence of the accused, should always be made before the trial on the merits is entered upon."

In Ryan v. State, 100 Ala. 105, 108, the court said:

"A motion was made to quash the special venire on the ground that the 'list of jurors served on the defendant failed to show what persons had been summoned to served as petit jurors for the second week of this term of the court, and the return of the sheriff on the venire for the second week showed that S. R. Harris and William Madison were not found, and their names were on the list served on the defendant for the trial of this cause.'

The facts thus stated in the motion were admitted to be true. The motion was denied. If it was made before the trial was entered upon it should have been granted. If made after the trial was entered upon it was properly overruled."

The motion of the plaintiff in error was in effect a challenge to the array, which should have been made before the selection of the jury was entered upon.

12 Ency. Pl. & Pr., 316;
1 Thompson on Trials, § 113;
Gardiner v. People, 6 Park. Cr. Rep. (N. Y. Supreme Ct.) 155, 199.

2. The question raised on the motion to quash the indictment was disposed of by the Supreme Sourt of Alabama on the ground of the prolixity of the pleading by which it was presented to the lower court. Section 3286 of the Code of Alabama reads as follows:

"If any pleading is unnecessarily prolix, irrelevant or frivolous, it may be stricken out at the costs of the party so pleading, on motion of the adverse party....."

Substantially the same provision as above is found in all of the previous Codes of Alabama since the first codification in 1852. This section has been many times acted upon by the courts of Alabama and pleading stricken out because not in conformity with it.

In Cotton v. Ward, 45 Ala. 359, 360, it is said:

"A party litigant may plead in answer to a suit against him as many several pleas as he may think necessary for his defense. But such pleas must be pleaded in the order prescribed by law, and they must not be unnecessarily prolix, irrelevant or frivolous; and in this State, they should conform substantially to the schedule of forms attached to the code. Otherwise, they may be stricken out at the cost of the party so pleading, on motion of the adverse party, or the count may refuse to strike out, and put the party to his demurrer."

And in Davis v. Louisville & Nashville Railroad Company, 108 Ala. 660, 662, the court used the following language:

"When a plea is frivolous, or unduly prolix, it may, on motion, stating the ground, be stricken from the file."

The State statute before referred to is merely declarative of the common law. As is said in 20 Enc. Pl. & Pr. 44, 45, "By virtue of the inherent power of a court to prevent an abuse of its process, a cause of action that is frivolous or vexatious may be summarily disposed of on an application to strike out the pleadings or to stay or dismiss the cause."

And in 21 Enc. Pl. & Pr. 226, it is said:

"The 'irrelevant and redundant matter' of the codes is, generally speaking, analogous to the 'impertinence' of the chancery practice and 'surplusage' in pleading at law." And on page 228, in the same volume: "The word 'irrelevant' signifies not pertinent or applicable; not tending to support; and 'irrelevant matter' is usually defined as matter in a pleading which has no substantial relation to the question in controversy and can in no event affect the decision of the court."

So it is clear if the motion in this case is unnecessarily prolix, irrelevant or frivolous, the trial court did not err in striking it.

In determining whether the motion was of such character it is well to examine the statute providing the qualifications of jurors in the city court of Montgomery. Such qualifications are defined by local act of March 2, 1901, which, so far as it bears upon this point, is as follows:

"Sec. 3. Be it further enacted, That the board of jury commissioners of said county, at such annual meetings shall select from the male residents of the county, who have resided in said county for one year or more, over twenty-one and under sixty years of age, the names of all persons, not exempt from jury duty, as in their opinion are fit and competent to discharge the duties of grand and petit jurors with honesty, impartiality and intelligence ....."

It will be seen that the right to vote does not enter into the qualification of a person for jury service. Whether or not a person is qualified to vote is wholly irrelevant and immaterial in determining the question of his qualification as a juror. A bare reading of the motion to quash the indictment will disclose that it is both prolix and irrelevant. It contains much matter relating to the

suffrage provisions of the Constitution, and to the conduct of elections in the State, and other things, not in any way pertinent to the issue.

Respectfully submitted,

Massey Wilson,

Attorney General of Alabama.

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Supreme Court of the United States.

No. 407.—October Term, 1903.

Dan. Rogers, Plaintiff in Error, vs. The State of Alabama. } In error to the Supreme Court of the State of Alabama.

[January 18, 1904.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a writ of error to the Supreme Court of Alabama, brought on the ground that the plaintiff in error, one Rogers, has been denied the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States. Rogers was indicted for murder and in due time filed a motion to quash the indictment because the jury commissioners appointed to select the grand jury excluded from the list of persons to serve as grand jurors all colored persons, although largely in the majority of the population of the county, and although otherwise qualified to serve as grand jurors, solely on the ground of their race and color and of their having been disfranchised and deprived of all rights as electors in the State of Alabama by the provisions of the new constitution of Alabama. The motion alleged that the grand jury was composed exclusively of persons of the white race, and concluded with a verification. To show the reality of the second reason alleged for the exclusion of blacks from the grand jury list the motion, as a preliminary, alleged that the sections of the new constitution which were before this Court in *Giles* v. *Harris*, 189 U. S. 475, were adopted for the purpose and had the effect of disfranchising all the blacks on account of their race and color and previous condition of servitude. On motion of the State this motion to quash was stricken from the files. Rogers excepted, but his exceptions were overruled by the Supreme Court of the State, seemingly on the ground that the prolixity of the motion was sufficient to justify the action of the court below. The Civil Code of Alabama provides by § 3286, "if any pleading is unnecessarily prolix, irrelevant, or frivolous, it may be stricken out at the costs of the party so pleading, on motion of the adverse party."

We follow the construction impliedly adopted by the Supreme Court of Alabama, and assume that this section was applicable to the motion. We also assume, as said by the court, that the qualifications of the grand

jurors are not in law dependent upon the qualifications of electors, and that any invalidity of the conditions attached to the suffrage could not of itself affect the validity of the indictment. But in our opinion that was not the allegation. The allegation was that the conditions said to be invalid worked as a reason and consideration in the minds of the commissioners for excluding blacks from the list. It may be that the allegation was superfluous and would have been hard to prove, but it was not irrelevant, for it stated motives for the exclusion which, however mistaken, if proved tended to show that the blacks were excluded on account of their race, as part of a scheme to keep them from having any part in the administration of the government or of the law. The whole motion takes two pages of the printed record, of the ordinary octavo size. A motion of that length, made for the sole purpose of setting up a constitutional right and distinctly claiming it, cannot be withdrawn for prolixity from the consideration of this Court, under the color of local practice, because it contains a statement of matter which perhaps it would have been better to omit but which is relevant to the principal fact averred.

It is a necessary and well settled rule that the exercise of jurisdiction by this Court to protect constitutional rights cannot be declined when it is plain that the fair result of a decision is to deny the rights. It is well known that this Court will decide for itself whether a contract was made as well as whether the obligation of the contract has been impaired. *Jefferson Branch Bank* v. *Skelly*, 1 Black, 436, 443. But that is merely an illustration of a more general rule. On the same ground there can be no doubt that if full faith and credit were denied to a judgment rendered in another State upon a suggestion of want of jurisdiction, without evidence to warrant the finding, this Court would enforce the constitutional requirement. See *German Savings and Loan Society* v. *Tull*, (Jan. 4, 1904.) In *Chapman* v. *Crane*, 123 U. S. 540, 547, 548, where the parties sought to avoid the obligation of a former decree by new matter, this Court said that the effect of what was done was not a Federal question, but proceeded to inquire in terms whether that ground of decision was the real one, or whether it was set up as an evasion and merely to give color to a refusal to allow the bar of the decree. We are of opinion that the Federal question is raised by the record and is properly before us. That question is disposed of by *Carter* v. *Texas*, 177 U. S. 442, and it was error not to apply that decision. The result of that and the earlier cases may be summed up in the following words of the judgment delivered by Mr. Justice Gray: "Whenever by any action of a State, whether through its legislature, through its courts, or through its executive or administrative officers, all persons of the African race are excluded, solely because of their race or color, from serving as grand jurors in the criminal prosecution of a person of the African

race, the equal protection of the laws is denied to him, contrary to the Fourteenth Amendment of the Constitution of the United States. *Strauder* v. *West Virginia*, 100 U. S. 303; *Neal* v. *Delaware*, 103 U. S. 370, 397; *Gibson* v. *Mississippi*, 162 U. S. 565." Our judgment upon this point makes it unnecessary to consider a motion to quash the panel of the petit jury for similar reasons, which was disposed of as having been made too late.

Judgment reversed, and case remanded for further proceedings not inconsistent herewith.

True copy.

Test:

Clerk Supreme Court, U. S.